Current Status of LGBTQ Rights in Japan:

Immigration status and same sex couples

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Immigration status: Spouses of different sex couples

Spouses of Japanese: "Spouse or Child of Japanese National"

Spouses of permanent residents: "Spouse or Child of Permanent Resident"

Spouses of long-term residents: "Long-Term Resident"

Immigration status: Spouses of different sex couples

Spouses of foreigners with "Diplomat" or "Official" status: "Diplomat" or "Official"

Spouses of foreigners who has a status based on activities such as work and study: "Dependent"

Immigration status: Spouses of same sex couples

Spouses of Japanese: No status

Spouses of foreigners with status of "Diplomat" or "Official":

"Diplomat" or "Official"

Spouses of foreigners with some status: "Designated Activities"

Immigration status: Spouses of same sex couples

保 存 期 間 3 年 法務省管在第5357号 平成25年10月18日

Immigration and Residency Review for Spouses of Same-Sex Spouses (Notice) Oct. 18, 2013 地 方 入 国 管 理 局 長 殿 地方入国管理局支局長 殿

法務省入国管理局入国在留課長 石 岡 邦 章

同性婚の配偶者に対する入国・在督審査について (通知)

在留資格「家族滯在」、「永住者の配偶者等」等にいう「配偶者」は、我が国の婚姻に関する法令においても有効なものとして取り扱われる婚姻の配偶者であり、外国で有効に成立した婚姻であっても同性婚による配偶者は含まれないところ、本年5月にフランスで「同性婚法」が施行されるなどの近時の路外国における同性婚に係る法整備の実情等を踏まえ、また、本国で同性婚をしている者について、その者が本国と同様に我が国においても安定的に生活できるよう人道的観点から配慮し、今般、同性婚による配偶者については、原則として、在審資格「特定活動」により入国・在留を認めることとしました。

ついては、本国で有効に成立している同性婦の配偶者から、本邦において、その配偶者との同居及び挟養を受けて在留することを希望して「特定活動」の在留資格への変更許可申請がなされた場合は、専決により処分することなく、人道的観点から配慮すべき事情があるとして、意見を付して本省あて誇訓願います。なお、管下出張所長へは、貴職から通知願います。

Immigration and Residency Review for Spouses of Same-Sex Spouses (Notice)

The term "spouse" in the terms of the status of residence "dependent" and "spouse of a permanent resident"

- refers to a spouse of a marriage treated as a valid marriage in Japan,
- does not include a spouse from a same-sex marriage, even if the marriage was validated in a foreign country.

Immigration and Residency Review for Spouses of Same-Sex Spouses (Notice)

"As a general rule, spouses of same-sex marriages should be allowed to live in Japan under the status of residence 'Designated Activities'"



Immigration status: Spouses of same sex couples

Case 1	French and French (registered in France)	0
Case 2	French and German (registered in both countries)	0
Case 3	French and German (registered in France only)	×
Case 4	French and Russian (registered in France)	×
Case 5	French and Japanese (registered in France)	×
Case 6	Russian and Russian (no registration)	×

Immigration status of same sex couples: Reasons for the notice

- "In light of the recent legal developments in other countries, such as the enactment of the Same-Sex Marriage Law in France in May of this year" (at the time)
- "in consideration of the humanitarian aspects of same-sex marriages in Japan as well as in the home country"

Immigration status of same sex couples: Unreasonable results

- The couple in case 4 cannot live together in Japan no matter how long they have lived together in France or another country

- The spouse of a Japanese national can obtain status of residence only if the Japanese renounces his or her Japanese nationality

Immigration status of same sex couples: some developments?

Case of a Japanese and Taiwanese couple:

- They had lived together for more than 20 years
- The Taiwanese had no status to stay
- "Long-term resident" status was given by the intervention of the court

Immigration status of same sex couples: some developments?

Case of a Japanese and American couple:

- lived together for more than 15 years in Japan and US
- Married in US
- Applied for change of status of the American based on the relationship with the Japanese: rejected
- Pending at the Tokyo District Court

https://www.facebook.com/LilasLifeTokyo

〇国務大臣(河野太郎君) しっかり議論しなければならない問題だと思って 様々な家族形態がある外国からよ

〜が日本人だと入ってこれないというのは、 先ほど御提起いただきました同性婚のパー

ていることに心から感謝を申し上げたいと思いま います。もう政府内で既に検討されている、外務

今申し上げたような例、海外にお住まいの日本 一層の御支援をいただきたいというふうに思っ

外国人の就業が拡大

加 者

Immigration status of same sex couples: some developments?

Taro Kono, Minister of Foreign Affairs (20 November, 2018)

- The fact that a Japanese partner in a same-sex marriage is not allowed to enter the country is clearly a strange thing to say
- The Ministry of Foreign Affairs has already raised this issue with the Ministry of Justice, and within the government we are actively considering ways to correct this problem.

Immigration status in Japan:

- The state is free to decide whether or not to accept foreigners in its own country, and what conditions are imposed on them.
- The fundamental human rights of the Constitution are only guaranteed within the framework of the law-based system of foreign residence

(Supreme Court judgement of 4 October 1978)

Harshly criticized by experts and scholars

Immigration status of same sex couples: ECHR, ECJ

European Court of Human Rights

- Taddeucchi v. Italy (30 June, 2016)
- Pajic v. Croatia (23 February, 2016)

European Court of Justice

- Coman and others v. Romania (18 July, 2018)

Thank you!

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